

REMARKS

Claims 26, 50, 53, and 79 have been amended by changing “plasticizable” to –plasticized– to provide consistency with antecedent terminology. No new matter has been introduced. The changes are shown in the attached “Version with Markings to Show Changes Made.” Upon entry of this amendment the claims in the case will remain claims 25-90.

In response to the September 9, 2002 Restriction Requirement in the above-identified application, applicant hereby elects the Group I claims (claims 25-43, 46, 47, 50, 52-71, 73, 75, 76, 79, and 81-90) drawn to an intermediate composition, for prosecution on the merits. The election is made without traverse. Applicant confirms that probiotics is the single disclosed species of encapsulant elected in the response filed on April 11, 2002 (filed via certificate of mailing on March 28, 2002), and that probiotics is a species of “neutraceutical component.” Claims readable on the elected species of probiotics are 25-43, 46, 50, 52-71, 73, 75, 79, and 81-89.

As to the further election of species requirement set forth in the September 9, 2002 Restriction Requirement, applicant hereby: 1) elects “durum wheat” as a single disclosed species of the plasticized matrix material without traverse, and 2) further elects “fats” as a single disclosed species of hydrophobic component without traverse.

The Examiner indicates that claims 31 and 33 are generic to distinct species comprising hydrophobic components. However, claim 31 recites hydrophobic components and claim 33 recites high water binding capacity components (which are hydrophilic components). "Release-rate controlling component" is generic to both types of components and apparently the Examiner wants one specific release-rate controlling component elected whether it is hydrophobic or high water binding capacity (hydrophilic). The Examiner apparently considers the hydrophobic components to be patentably distinct species from the high water binding capacity components (hydrophilic components). Applicants thus elect fats as the single disclosed species of the species hydrophobic component for prosecution on the merits.

Claims readable on the elected species of durum wheat as the plasticized matrix material are claims 25-43, 46, 47, 52-71, 73, 75, 76, 79, and 81-90.

Claims readable on the elected species of fats as the hydrophobic release-rate controlling component are claims 25-31, 34-43, 46, 47, 50, 52-59, 61-71, 73, 75, 76, 79, and 81-90.

Claims readable on the three elected species of probiotics as the encapsulant, durum wheat as the plasticized matrix material, and fats as the hydrophobic release-rate controlling component are claims 25-31, 34-43, 46, 52-59, 61-71, 73, 75, and 81-89.

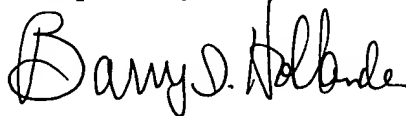
van Lengerich - Serial No. 09/782,320
Third Preliminary Amendment, and Response to
Restriction Requirement and Election of Species

If one or more generic claims are found to be allowable, then applicant respectfully requests that the requirement for election of species be withdrawn. See MPEP 806.04(h) fourth paragraph and MPEP 809.02(c)(B).

A request for a one month extension of time is being filed concurrently herewith.

If any fees are due upon filing of this document, please charge our Deposit Account No. 501032 (Docket No. BVL-102A).

Respectfully submitted,

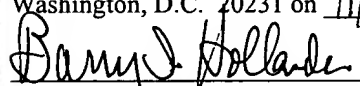


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enc. Version with Markings to Show Changes Made

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| <p align="center">CERTIFICATE OF MAILING</p> <p>I hereby certify that this correspondence dated <u>11/12/02</u> is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on <u>11/12/02</u>.</p> <p align="center"> HOLLANDER LAW FIRM, P.L.C. Suite 305 10300 Eaton Place Fairfax, Virginia 22030</p> <p>Date: <u>11/12/02</u></p> |
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Version with Markings to Show Changes Made

IN THE CLAIMS:

Claims 26, 50, 53, and 79 have been amended as follows:

26. (Amended) An encapsulated product according to claim 25 wherein said [plasticizable] plasticized matrix material comprises an at least partially gelatinized starch, which starch is not substantially dextrinized.

50. (Amended) An encapsulated product according to claim 25 wherein said [plasticizable] plasticized matrix material is at least one member selected from the group consisting of starches, cyclodextrins, dextrans, monosaccharides, disaccharides, polyvinylpyrrolidone, copolymers of N-vinylpyrrolidone and vinyl acetate, polyvinyl alcohol, cellulose esters, cellulose ethers, and polyethylene glycol.

53. (Amended) An encapsulated product according to claim 52 wherein said [plasticizable] plasticized matrix material comprises an at least partially gelatinized starch, which starch is not substantially dextrinized.

79. (Amended) An encapsulated product according to claim 52 wherein said [plasticizable] plasticized matrix material is at least one member selected from the group consisting of starches, cyclodextrins, dextrans, monosaccharides, disaccharides, polyvinylpyrrolidone, copolymers of N-vinylpyrrolidone and vinyl acetate, polyvinyl alcohol, cellulose esters, cellulose ethers, and polyethylene glycol.